

overages and shortages shall be available to the Director for audit as provided in §220.033. Inventory adjustments of controllable materiel shall be made by the lessee to the NPSL capital account for overages and shortages. Controllable materiel removed from physical inventory that has not been credited to NPSL operations under §220.015(a)(2) shall be credited to NPSL operations at its original value, except that when the cost of the materiel originally qualified for the allowance for capital recovery in §220.020, the credit shall be calculated pursuant to §220.021(a)(3).

§ 220.033 Audits.

(a) The accounts of an NPSL lessee or of a contractor of the lessee which are related to NPSL operations shall be subject to audit by DOI or its appointed agent. Where possible, the auditor for DOI shall coordinate audit efforts with other nonoperators, if any. DOI shall have the right to initiate an audit any time within thirty-six months of the due date of the monthly statement that is to be audited or the date that the statement was mailed, whichever is later, provided, however, that audits may not be conducted any more frequently than once every year except upon a showing of fraud or willful misrepresentation.

(b)(1) When nonoperators of an NPSL lease call an audit in accordance with the terms of their operating agreement, the Director shall be notified of the audit call in the same manner as the operator is notified. DOI may elect to send an auditor with the audit team specified by the nonoperators in lieu of calling for a separate audit by DOI.

(2) If DOI determines to call for an audit, DOI shall notify the lessee of its audit call and set a time and place for the audit. Such a notice shall be sent at least thirty days before the suggested time for the audit to allow the nonoperators to join in DOI's audit in lieu of calling for their own audit. The place for the audit will normally be the place where the lessee maintains its records pertaining to the NPSL lease. The lessee shall send copies of the notice to the nonoperators on the lease. The lessee shall use reasonable effort to notify all nonoperators, but failure

to include one or more nonoperators in the notification shall not void the notice.

(3) When DOI calls for an audit, DOI may suggest the date and time when the audit may commence. The estimated duration of the audit may be mentioned to the lessee as well as to the other nonoperators who may elect to supply and auditor for their own audit purposes. The lessee's office where the audit will be held may be named or, if not known, inquired about. If a visit to a field plant or field office is contemplated by the government auditor, such a field trip may be mentioned. If DOI expresses a desire to review a period on which the thirty-six month time limitation has expired, it is the lessee's prerogative to allow the review or to request that DOI adhere to the time limitation specified in these regulations.

(c)(1) Exceptions to the accounting by the lessee, whether in favor of the government or the lessee, shall be noted in a report to the lessee. The lessee shall have 60 days from the mailing of a notice of exceptions to agree to the adjustments proposed by the DOI auditor or to object to the proposed adjustments. If the lessee accepts the proposed adjustments, the adjustment shall be booked in the month in which the lessee agrees to the adjustment, except where such adjustment would have resulted in a change in any net profit share payment due the United States. In such a case, there shall be a redetermination of the NPSL capital account pursuant to §220.034.

(2) If the lessee disagrees with the adjustment, the lessee shall have the right to appeal the adjustment to the Director.

(d) Upon receipt of an agreement by the government auditor that there are no required audit adjustments, upon final determination with respect to any audit adjustment proposed by the government auditor, or upon the lapse of thirty-six months from the due date or date of mailing of the statement of account on an NPSL lease, whichever comes later, the books shall be closed for audit adjustment purposes, except upon a showing of fraud or willful misrepresentation.

§ 220.034

(e) Records required to be kept under § 220.030(a) shall be made available for inspection by any authorized agent of DOI at any time during normal business hours upon the request of the Director or other authorized official.

§ 220.034 Redetermination and appeals.

(a) If, as a result of an inspection of records or an audit under § 220.033, the Director determines that there is an error in the NPSL capital account or an error in calculating the net profit share payment, whether in favor of the government or the lessee, the Director shall redetermine the net profit share base and recalculate the net profit share payment due the United States and notify the lessee of the recalculation.

(b) The lessee shall pay any additional amount of net profit share payment owed plus interest, compounded monthly, from the date that the payment was due until the date it is actually paid. Interest shall be calculated at the prevailing rate or rates as published in the Bulletin to the Department of the Treasury Fiscal Requirements Manual, in effect for the period or periods over which the payment is owed.

(c) If the recalculated profit share payment is less than the amount paid the United States, the lessee shall apply such overpayment to the next profit share payment.

(d) Within 30 days after receiving notice of the recalculation as provided in paragraph (a) of this section, the lessee may appeal the decision of the Director in accordance with the appeals provision of 30 CFR part 290.

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